IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 1195 of 2002

Between:

Bandari Rajam S/o B. Posham
R/o Q.No.268, No.II Incline,
Bellampalli, Adilabad District.

..... PETITIONER

AND

1. The Singareni Collieries Company Ltd.,

represented by its General Manager (Personnel)
Kothagudem, Khammam District.
2. The Deputy Controller of Accounts,

The Singareni Collieries Company Ltd.,
Bellampalli, Adilabad District.
3. The Committee of Apex Medical Board,

Singareni Collieries Company Ltd.,

represented by its Chief Medical Officer
Kothagudem, Khammam District.

.....RESPONDENTS

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondents: MR.K.SRINIVASA MURTHY

The Court made the following:

ORDER:

Challenging the action of the respondents in assessing the age of the petitioner, based on the report of the apex Medical Board dated 01.11.2001, as 59 years as on 01.11.2001 instead of 09.06.2003 as recorded in the service register of the respondent-Company and in issuing the impugned proceedings dated 10.12.2001 retiring the petitioner on 31.10.2002, the present writ petition has been filed.

The case of the petitioner, in brief, is that he joined as a Peon on 23.03.1959 in the respondent company. At the time of joining the service, he produced the Transfer Certificate issued by the Zilla Parishad Secondary School, Bellampally. Subsequently, he was promoted as Shroff in Grade-IV by an order dated 11.10.1988 and his services were confirmed as such by order dated 29.11.1988. Further, the case of the petitioner is that the respondent-Company issued a notice directing him to attend before the Medical Superintendent for assessment of his age, and on receipt of the said notice, he appeared before the Medical Superintendent. Thereafter, the respondent-Company issued notice dated 06.04.2001 to the petitioner stating that he would be attaining the age of 60 years as on 09.06.2003 and that he would be retiring on the A.N. of 30.06.2003. Further, it is the case of the petitioner that the respondent issued another notice dated 30.10.2001 directing him to appear before the Apex Medical Board on 01.11.2001 and that he appeared before the Apex Medical Board and the Board took his signatures on two sets of papers, one on a proforma and the other on blank proforma papers duly intimating that his date of birth will be recorded as 09.06.1943 only. Thereafter, the respondent issued the impugned proceedings dated 10.12.2001 stating that as per the Apex Medical Board report, his age was assessed as 59 years as on 01.11.2001 and that he would be attaining the age of superannuation on 30.10.2002. Having received the said proceedings, the petitioner made a representation on 14.12.2001 to the first respondent, in vain. The grievance of the petitioner is that at the time of his entry into service, his date of birth was recorded as 09.06.1943 in B-register of the respondent-Company and in the retirement notice dated 06.04.2001 it was mentioned that he would be attaining the age of 60 years as on 09.06.2003, and he would be retiring on 30.06.2003, and thus, there is no necessity for the respondent-Company to refer him to the Board for assessment of his date of birth and issuing the impugned proceedings.

The respondents filed counter affidavit contending that they issued a notice to the petitioner to appear before the Apex Medical Board for assessing his age and the Board has assessed his age as 59 years as on 01.11.2001 and he would be retiring on 31.10.2002. It is contended that the Transfer Certificate issued by Zilla Parishad Secondary School, Bellampally, which was obtained subsequent to the date of employment, cannot give a right for determining the age of the petitioner. The Rules for age determination make it clear that only those certificates obtained prior to the employment will be taken into consideration.

The learned counsel for the petitioner contended that based on the Secondary School Certificate produced by the petitioner, his date of birth was mentioned in the Service Register as 09.06.1943, and therefore, it cannot be altered and the impugned proceedings suffer from illegality.

On the other hand, the learned standing counsel for the respondents contended that at the time of appointment, the petitioner was minor and the date of birth as produced by him is false, and therefore, he was referred to the Apex Medical Board for determination of his date of birth. Hence, the proceedings cannot be said to be illegal.

As per the instruction No.76 of the Circular, in the case of appointees, who have passed Matriculation or equivalent examinations, the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances. The contention of the learned standing counsel for the respondents is that at the time of appointment the petitioner was less than 18 years, and so, he was referred to the Apex Medical Board.

In the instant case, the respondent-Company issued proceedings dated 06.04.2001 informing the petitioner that he would be attaining the age of supernnuation of 60 years by A.N. of 30.06.2003. Thereafter, the respondent-Company issued the age assessment report dated 01.11.2001 on the ground that they have assessed the age of the petitioner as 59 years as on 01.11.2001 and he

would be retiring as on 30.10.2002. Admittedly, the impugned proceedings does not contain any basis whatsoever to arrive at such a conclusion. Since the circular instructions clearly indicate that once the date of birth was entered in the service register, the same cannot be altered under any circumstances, it is not known as to how the respondents determined the age of the petitioner as 59 years as on 01.11.2001. Therefore, the impugned order suffers from serious infirmities and is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order is set aside. No order as to costs.

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(K.C. BHANU, J)

Date: 18.08.2005

Ksn

This Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Justice Bilal Nazki , the Acting Chief Justice on this the 18th day of August Two thousand and five.